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EXTRAORDINARY

PART II—Section 2

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LOK SABHA

The following Bill was introduced in Lok Sabha on the 19th November, 1959:

BILL NO. 80 OF 1959

A Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Legal Practitioners Act, 1959.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Short title,
extent and
commence-
ment.

10 (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. In this Act, unless the context otherwise requires,—

(a) "advocate" means an advocate entered in any roll under the provisions of this Act;

Definitions.

15 (b) "All-India Bar Council" means the All-India Bar Council constituted under section 4;

(c) "appointed day", in relation to any provision of this Act, means the day on which that provision comes into force;

(d) "attorney" includes a solicitor;

(1165)

(e) "Bar Council" means a Bar Council constituted under this Act;

(f) "common roll" means the common roll of advocates prepared and maintained by the All-India Bar Council under section 18;

(g) "High Court", except in sub-section (1) of section 32 and in section 39 does not include a court of the Judicial Commissioner, and, in relation to a State Bar Council, means,—

(i) in the case of a State Bar Council constituted for a State, the High Court for that State, and

(ii) in the case of a State Bar Council constituted for a State and one or more Union territories, the High Court for the State;

(h) "law graduate" means a person who has obtained a bachelor's degree in law from any University established by law in India;

(i) "legal practitioner" means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "roll" means a roll of advocates prepared and maintained under this Act;

(l) "State" does not include a Union territory;

(m) "State Bar Council" means a Bar Council constituted under section 3;

(n) "State roll" means a roll of advocates prepared and maintained by a State Bar Council under section 16.

CHAPTER II

BAR COUNCILS

State Bar
Councils.

3. (1) There shall be a Bar Council—

(a) for each of the States of Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Orissa, Rajasthan and Uttar Pradesh, to be known as the Bar Council of that State;

(b) for the State of Assam and the Union territory of Manipur, to be known as the Assam Bar Council;

(c) for the State of Kerala and the Union territory of the Laccadive, Minicoy and Amindivi Islands, to be known as the Kerala Bar Council;

(d) for the State of Punjab and the Union territories of Delhi and Himachal Pradesh, to be known as the Punjab Bar Council; and

5 (e) for the State of West Bengal and the Union territories of Tripura and the Andaman and Nicobar Islands, to be known as the West Bengal Bar Council.

(2) A State Bar Council shall consist of the following members, namely:—

10 (a) two Judges of the High Court who have been advocates, nominated by the Chief Justice of the High Court:

Provided that in the case of the Assam Bar Council and the Orissa Bar Council only one such Judge shall be so nominated;

(b) the Advocate-General for the State, *ex officio*;

15 (c) in the case of the Assam Bar Council and the Orissa Bar Council, ten members, and in every other case, fifteen members, elected by advocates on the roll of the State Bar Council from amongst themselves:

20 Provided that of the elected members of the West Bengal Bar Council and the Bombay Bar Council, such number, as may be prescribed in each case, shall be persons who are entitled to practise in the High Court at Calcutta or the High Court at Bombay, as the case may be, in the exercise of its original jurisdiction.

25 (3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed.

4. (1) There shall be a Bar Council for the territories to which ^{All India} this Act extends to be known as the All-India Bar Council which shall consist of the following members, namely:—

30 (a) two Judges of the Supreme Court who have been advocates, nominated by the Chief Justice of India;

(b) the Attorney-General of India, *ex officio*;

(c) the Solicitor-General of India, *ex officio*;

35 (d) three members elected by the Supreme Court Bar Association from amongst its members;

(e) one member elected by each State Bar Council from amongst its members;

40 (f) where a State Bar Council has on its roll on the 1st day of January of the year in which the election is held more than three thousand advocates, one additional member elected by it, such member being a person who is on its roll and is not a member of the State Bar Council.

(2) There shall be a Chairman and a Vice-Chairman of the All-India Bar Council elected by the Council in such manner as may be prescribed.

Bar Council
to be body
corporate.

5. Every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and may by the name by which it is known sue and be sued. 5

Functions of
State Bar
Councils.

6. The functions of a State Bar Council shall be—

- (a) to admit persons as advocates on its roll;
- (b) to prepare and maintain such roll; 10
- (c) to entertain and determine cases of misconduct against advocates on its roll;
- (d) to manage and invest the funds of the Bar Council;
- (e) to provide for the election of its members;
- (f) to perform all other functions conferred on it by or under this Act; 15
- (g) to do all other things necessary for discharging the aforesaid functions.

Functions
of All-India
Bar Council.

7. The functions of the All-India Bar Council shall be—

- (a) to prepare and maintain a common roll of advocates; 20
- (b) to lay down standards of professional conduct and etiquette for advocates;
- (c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council; 25
- (d) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;
- (e) to exercise general supervision and control over State Bar Councils;
- (f) to lay down standards of legal education in consultation with the Universities in India imparting such education; 30
- (g) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities;
- (h) to manage and invest the funds of the Bar Council; 35
- (i) to provide for the election of its members;

(j) to perform all other functions conferred on it by or under this Act;

(k) to do all other things necessary for discharging the aforesaid functions.

5 8. The term of office of the elected members of a Bar Council shall be six years, but as nearly as possible one-third of the members first elected to each such Council shall retire on the expiration of every second year in the prescribed manner, and the vacancies so caused shall be filled by the election of new members in the prescribed manner.

Term of
office of
members of
Bar Council.

9. (1) A State Bar Council shall constitute from amongst its members the following standing committees, namely:—

Constitution
of standing
committees.

(a) an executive committee consisting of five members;

15 (b) an enrolment committee consisting of three members;
and

(c) a disciplinary committee consisting of five members.

(2) The All-India Bar Council shall constitute the following standing committees, namely:—

(a) an executive committee consisting of nine members elected by it from amongst its members;

(b) a disciplinary committee consisting of five members elected by it from amongst its members; and

(c) a legal education committee consisting of twelve members of whom—

25 (i) two shall be the Judges of the Supreme Court nominated on the Council by the Chief Justice of India;

(ii) five shall be persons elected by the Council from amongst its members; and

30 (iii) five shall be persons co-opted by the members referred to in sub-clause (i) and sub-clause (ii).

(3) A State Bar Council and the All-India Bar Council may constitute from amongst its members such other committees as it may deem necessary for the purpose of carrying out the provisions of this Act.

35 10. (1) Every Bar Council shall appoint a secretary and an accountant and may employ such number of other persons on its staff as it may deem necessary.

Staff of
Bar Council.

(2) The secretary and the accountant shall possess such qualifications as may be prescribed.

Accounts
and audit.

11. (1) Every Bar Council shall cause to be maintained such books of accounts and other books in such form and in such manner as may be prescribed.

(2) The accounts of a Bar Council shall be audited by auditors appointed by it, at such times and in such manner as may be prescribed.

(3) As soon as the accounts of a State Bar Council have been audited, that Bar Council shall send a copy of such accounts together with a copy of the report of the auditors thereon, to the All-India Bar Council.

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Vacancies
in Bar
Councils and
committees
thereof not
to invalidate
action taken.

12. No act done by a Bar Council or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council or committee, as the case may be.

Election to
Bar Councils
not to be
questioned
on certain
grounds.

13. No election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.

Power to
make rules.

14. (1) A Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner in which the election of members of the Bar Council shall be held and the manner in which results of elections shall be published;

(b) in the case of a State Bar Council, the division of the territory for which the Bar Council is constituted into various constituencies;

(c) in the case of the West Bengal Bar Council and the Bombay Bar Council, the number of advocates practising in the High Court at Calcutta or the High Court at Bombay, as the case may be, in the exercise of its original jurisdiction, who shall be elected to the Bar Council;

(d) the manner of election of the Chairman and the Vice-Chairman of the Bar Council;

(e) the manner in which and the authority by which doubts and disputes as to the validity of an election to the Bar Council or to the office of the Chairman or Vice-Chairman shall be finally decided;

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- (f) the manner in which the order of retirement by rotation of the members of the Bar Council shall be determined;
- (g) the filling of casual vacancies in the Bar Council;
- 5 (h) the powers and duties of the Chairman and the Vice-Chairman of the Bar Council;
- (i) the summoning and holding of meetings of the Bar Council, the times and places where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
- 10 (j) the constitution and functions of any committee of the Bar Council and the term of office of members of any such committee;
- (k) the summoning and holding of meetings and the conduct of business of any such committee;
- 15 (l) the qualifications and the conditions of service of the secretary, the accountant and other employees of the Bar Council;
- (m) the maintenance of books of accounts and other books by the Bar Council;
- 20 (n) the appointment of auditors and the audit of the accounts of the Bar Council;
- (o) the management and investment of the funds of the Bar Council.
- (3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the All-India Bar Council.

CHAPTER III

ADMISSION AND ENROLMENT OF ADVOCATES

15. (1) There shall be two classes of advocates, namely, senior advocates and other advocates. Senior and other advocates.
- (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, experience and standing at the Bar he is deserving of such distinction.
- 35 (3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the All-India Bar Council may, in the interests of the legal profession, prescribe.

(4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate.

State Bar Council to maintain roll of advocates.

16. (1) Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses 5 of—

(a) all persons who were entered as advocates on the roll of the High Court immediately before the appointed day;

(b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the 10 appointed day.

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

(3) Entries in each part of the roll of advocates prepared and 15 maintained by a State Bar Council under this section shall be in the order of seniority, and such seniority shall be determined as follows:—

(a) the seniority of advocates referred to in clause (a) of sub-section (1) shall be determined in accordance with their 20 seniority *inter se* immediately before the appointed day;

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day shall, for the purposes of the first part of the State roll, be determined in accordance with such principles as the All-India Bar 25 Council may specify;

(c) the seniority of a vakil, pleader or an attorney who is enrolled as an advocate under sub-section (2) of section 22 shall be determined in accordance with the date of his entry in the register of vakils, pleaders or attorneys, as the case may be; 30

(d) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be.

State Bar Councils to send copies of rolls of advocates to the All-India Bar Council.

17. Every State Bar Council shall send to the All-India Bar 35 Council an authenticated copy of the first roll of advocates prepared by it under this Act and shall thereafter communicate to the All-India Bar Council all alterations in, and additions to, any such roll, as soon as the same have been made.

18. (1) The All-India Bar Council shall prepare and maintain a common roll of advocates which shall comprise the entries made in all State rolls and shall include the names of all advocates entitled as of right to practise in the Supreme Court immediately before the appointed day whose names are not entered in any State roll.

(2) The common roll of advocates shall consist of two parts, the first part containing the names of senior advocates, and the second part, the names of other advocates.

(3) Entries in each part of the common roll shall be in the order of seniority and such seniority shall be determined as follows:—

(a) the seniority of an advocate enrolled in a State roll shall be determined in accordance with his seniority in that roll;

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day and whose name is not entered in any State roll shall, for the purposes of the first part of the common roll, be determined in accordance with such principles as the All-India Bar Council may specify in this behalf;

(c) the seniority of any person who was an advocate (but not a senior advocate) of the Supreme Court immediately before the appointed day and whose name is not entered in any State roll shall, for the purposes of the second part of the common roll, be determined in accordance with the date of his enrolment as an advocate of the Supreme Court.

(4) There shall be entered in the common roll of advocates all alterations and additions communicated to the All-India Bar Council under section 17 by a State Bar Council.

19. (1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other.

Disputes regarding seniority.

(2) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred—

(a) if the dispute relates to seniority in a State roll, to the State Bar Council;

(b) if the dispute relates to seniority in the common roll, to the All-India Bar Council;

and the decision of the State Bar Council or the All-India Bar Council, as the case may be, in respect of such dispute shall be final.

Certificate
of enrolment.

20. There shall be issued a certificate of enrolment in the prescribed form to every person whose name is entered in any roll of advocates maintained under this Act.

Right of
pre-audience.

21. (1) The Attorney-General of India shall have pre-audience over all other advocates.

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(2) Subject to the provisions of sub-section (1), the Solicitor-General of India shall have pre-audience over all other advocates.

(3) Subject to the provisions of sub-sections (1) and (2), the Additional Solicitor-General of India shall have pre-audience over all other advocates.

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(4) Subject to the provisions of sub-sections (1), (2) and (3), the Advocate-General of any State shall have pre-audience over all other advocates, and the right of pre-audience among Advocates-General *inter se* shall be determined by their respective seniority.

(5) Subject as aforesaid—

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(i) senior advocates shall have pre-audience over other advocates, and

(ii) the right of pre-audience of senior advocates *inter se* and other advocates *inter se* shall be determined by their respective seniority.

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Persons who
may be
admitted as
advocates on
the roll of
High Court.

22. (1) Subject to the provisions of this Act and the rules made thereunder, no person shall, on or after the appointed day, be admitted as an advocate on a State roll unless he—

(a) is a citizen of India:

Provided that, subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) has completed the age of twenty-one years;

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(c) (i) has obtained a bachelor's degree in Arts, Science or Commerce from any University established by law in India and has thereafter obtained a bachelor's degree in law from any such University which is recognised for the purposes of this Act by the All-India Bar Council:

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Provided that for a period of three years from the appointed day, an under-graduate who has obtained a bachelor's degree in law from any such University which immediately before the

appointed day was conferring such degrees on under-graduates, shall be deemed to possess the qualification required by this clause; or

5 (ii) has obtained any qualification in law from any foreign country which is recognised by the All-India Bar Council for the purposes of this Act;

(d) has undergone the prescribed course of training in law and passed the prescribed examination after such training:

Provided that this clause shall not apply to—

10 (i) a barrister who has received practical training in England;

(ii) any person who has been a member of the Judicial Service of a State or a member of the Central Legal Service; and

15 (iii) any other class of persons who by reason of their legal training or experience are declared by the All-India Bar Council to be exempt from the provisions of this clause.

(e) fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

20 (f) has paid an enrolment fee of rupees five hundred to the State Bar Council.

(2) Notwithstanding anything contained in sub-section (1), a vakil, pleader or an attorney who is a law graduate, or who is not a law graduate but was entitled to be enrolled as an advocate of a
25 High Court immediately before the appointed day under any law then in force, may be admitted as an advocate on a State roll if he—

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than one year from the appointed day; and

30 (b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

23. An application for admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practise.

Authority to whom applications for enrolment may be made.

35 24. (1) A State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provisions of sub-sections (2) and (3), such committee shall dispose of the application in the prescribed manner.

Disposal of applications for admission as an advocate.

40 (2) Where the enrolment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the All-India Bar Council and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application.

(3) The enrolment committee of a State Bar Council shall dispose of any application referred to the All-India Bar Council under sub-section (2) in conformity with the opinion of the All-India Bar Council.

Application once refused not to be entertained by another Bar Council except in certain circumstances.

25. Where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission of such person as an advocate on its roll, except with the previous consent in writing of the State Bar Council which refused the application and of the All-India Bar Council.

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Power to make rules.

26. (1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) a course of practical training in law and the examination to be passed after such training for admission as an advocate on the roll of the Bar Council;

(b) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

(c) the conditions subject to which a person may be admitted as an advocate on any such roll;

(d) the instalments in which the enrolment fee may be paid.

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(3) No rules made under this Chapter shall have effect unless they have been approved by the All-India Bar Council.

CHAPTER IV

RIGHT TO PRACTISE

Advocates to be the only recognised class of legal practitioners.

27. Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of legal practitioners, namely, advocates enrolled under this Act.

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Right of advocates to practise.

28. Subject to the provisions of this Act and any rules made thereunder—

(a) every advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends;

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- (i) in all courts including the Supreme Court;
- (ii) save as otherwise provided by or under any law for the time being in force, before any tribunal or person legally authorised to take evidence;
- 5 (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

29. Notwithstanding anything contained in sections 27 and 28, the High Court at Calcutta or the High Court at Bombay may provide for the admission of proper persons to be attorneys and shall have power to remove or to suspend from practice on reasonable cause, any such attorney. Special provision for attorneys.

30. Notwithstanding anything contained in this Chapter, any court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case. Power of court to permit appearances in particular cases.

31. Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act. Advocates alone entitled to practise.

32. (1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. Power of High Courts to make rules.

(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta and the High Court at Bombay may make rules—

- (i) providing for the qualification and admission of proper persons to be attorneys;
- 30 (ii) declaring what shall be deemed to be the functions, powers and duties of such attorneys and the procedure to be followed in removing or suspending any such attorney from practice;
- (iii) determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction. Power of High Courts to make rules.
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(3) Until rules are made under this section, any rules made by a High Court under its Letters Patent or any other law relating to any of the matters specified in this section which were in force immediately before the appointed day, shall continue in force so far as consistent with this Act, and shall be deemed to be rules made under this section.

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CHAPTER V

MISCONDUCT OF ADVOCATES

Punishment
of advocates
for mis-
conduct.

33. (1) Where a State Bar Council has received a complaint or has otherwise reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. 5

(2) The disciplinary committee of a State Bar Council, if it does not summarily reject the complaint, shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State 10

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed; 15

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit; 20

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall during the period of suspension, be debarred from practising in any court or before any authority or person in India. 25

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf. 30

Disciplinary
powers of
All-India
Bar Council

34. (1) Where the All-India Bar Council has received a complaint or has otherwise reason to believe that any advocate on the common roll whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. 35

(2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the All-India Bar Council may, of its own motion, withdraw for inquiry before itself any proceedings for

disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

(3) The disciplinary committee of the All-India Bar Council, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 33, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4) In disposing of any proceedings under this section the disciplinary committee of the All-India Bar Council may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section 33, and where any proceedings have been withdrawn for inquiry before the All-India Bar Council, the State Bar Council concerned shall give effect to any such order.

35. (1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under sub-section (3) of section 33 may, within sixty days from the date of the communication of the order to him, prefer an appeal to the All-India Bar Council.

(2) Every such appeal shall be heard by the disciplinary committee of the All-India Bar Council which may pass such order thereon as it deems fit.

9 of 1903. (3) The provisions of sections 5 and 12 of the Indian Limitation Act, 1908, shall so far as may be, apply to appeals under this section.

25 36. An appeal made under section 35 shall not operate as a stay of the order appealed against, but the All-India Bar Council hearing the appeal may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.

37. (1) Where an order is made under this Chapter reprimanding or suspending an advocate, a record of the punishment shall be entered against his name—

(a) in the case of an advocate whose name is entered in the State roll, in that roll;

35 (b) in the case of an advocate whose name is entered in the common roll and not in any State roll, in the common roll;

and where any order is made removing an advocate from practice, his name shall be struck off the State roll or the common roll, as the case may be.

(2) Where in respect of any advocate a record of punishment is entered in a State roll or where the name of an advocate is struck off

any such roll, a record of such punishment shall also be entered in the common roll, or, as the case may be, his name shall be struck off the common roll.

(3) Where any advocate is suspended or removed from practice, the certificate granted to him under section 20, in respect of his enrolment shall be recalled.

Powers of
disciplinary
Committee.

38. (1) The disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath; 10

(b) requiring discovery and production of any documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office; 15

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed:

Provided that no such disciplinary committee shall have the right to require the attendance of— 20

(a) any presiding officer of a court except with the previous sanction of the High Court to which such court is subordinate;

(b) any officer of a revenue court except with the previous sanction of the State Government.

(2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, and every such disciplinary committee shall be deemed to be a civil court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898. 45 of 1860. 30 5 of 1898.

(3) For the purposes of exercising any of the powers conferred by sub-section (1), a disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the civil court shall cause such process to be served or such commission to be issued, as the case may be and may enforce any such process as if it were a process for attendance or production before itself. 35

39. The disciplinary committee of a Bar Council may make such order as to the costs of any proceedings before it as it may deem fit and any such order shall be executable as if it were an order—

Cost of proceedings before a disciplinary committee.

(a) in the case of an order of the disciplinary committee of the All-India Bar Council, of the Supreme Court;

(b) in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

40. The disciplinary committee of a Bar Council may of its own motion or otherwise review any order passed by it under this Chapter:

Review of orders by disciplinary committee.

Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the All-India Bar Council.

CHAPTER VI

MISCELLANEOUS

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41. Any person who practises in any court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

Penalty for persons illegally practising in courts and before other authorities.

42. Every State Bar Council shall, before the thirtieth day of April in each financial year, pay to the All-India Bar Council a sum equivalent to forty per cent. of the total of the enrolment fees realised by it under this Act during the financial year immediately preceding that year.

Payment of part of enrolment fees to the All-India Bar Council.

43. (1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents citizens of India from practising the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practise the profession of law in India.

Reciprocity.

(2) Subject to the provisions of sub-section (1), the All-India Bar Council may prescribe the conditions, if any, subject to which foreign qualifications in law shall be recognised for the purpose of admission as an advocate under this Act.

44. No suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.

Indemnity against legal proceedings.

General
power of
All-India
Bar Council
to make
rules.

45. The All-India Bar Council may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe—

(a) the standards of professional conduct and etiquette to be observed by advocates; 5

(b) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose;

(c) the foreign qualifications in law which shall be recognised for the purpose of admission as an advocate under this Act; 10

(d) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;

(e) the restrictions in the matter of practice to which senior advocates shall be subject; 15

(f) the fees which may be levied in respect of any matter under this Act;

(g) general principles for guidance of State Bar Councils.

Repeal of
certain en-
actments.

46. (1) On the date on which a State Bar Council is constituted 20 under this Act, the provisions of sections 3 to 7 (inclusive), sub-sections (1), (2) and (3) of section 9, section 15 and section 20 of the Indian Bar Councils Act, 1926, shall stand repealed in the territory 38 of 1926. for which the State Bar Council is constituted.

(2) On the date on which Chapter III comes into force, the 25 following shall stand repealed, namely:—

(a) sections 6, 7, 18 and 37 of the Legal Practitioners Act, 1879, and so much of sections 8, 9, 16, 17, 19 and 41 of that Act as relate to the admission and enrolment of legal practitioners; 18 of 1879.

(b) sections 3, 4 and 6 of the Bombay Pleaders Act, 1920; 30 Bombay Act, 17 of 1920.

(c) so much of section 8 of the Indian Bar Councils Act, 1926, as relates to the admission and enrolment of legal practitioners; 38 of 1926.

(d) the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the admission and enrolment of legal practitioners. 35

(3) On the date on which Chapter IV comes into force, the following shall stand repealed, namely:—

- 18 of 1879. 5 (a) sections 4, 5, 10 and 20 of the Legal Practitioners Act, 1879, and so much of sections 8, 9, 19 and 41 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person;
- Bombay Act, 17 of 1920. 38 of 1926. 10 (b) sections 5, 7, 8 and 9 of the Bombay Pleaders Act, 1920;
- 10 (c) section 14 of the Indian Bar Councils Act, 1926, and so much of sections 8 and 15 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person;
- 18 of 1951. 15 (d) the Supreme Court Advocates (Practice in High Courts) Act, 1951;
- 15 (e) the provisions of the Letters Patent of any High Court and of any other law conferring on legal practitioners the right to practise in any court or before any authority or person.

(4) On the date on which Chapter V comes into force, the following shall stand repealed, namely:—

- 18 of 1879. 20 (a) sections 12 to 15 (inclusive), sections 21 to 24 (inclusive) and sections 39 and 40 of the Legal Practitioners Act, 1879, and so much of sections 16, 17 and 41 of that Act as relate to the suspension, removal or dismissal of legal practitioners;
- Bombay Act, 17 of 1920. 25 (b) sections 24 to 27 (inclusive) of the Bombay Pleaders Act, 1920;
- 38 of 1926. 25 (c) sections 10 to 13 (inclusive) of the Indian Bar Councils Act, 1926;
- (d) the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the suspension, removal or dismissal of legal practitioners.

30 (5) When the whole of this Act has come into force—

- 18 of 1879. 35 (a) the remaining provisions of the Acts referred to in this section which do not stand repealed by virtue of any of the foregoing provisions of this section (except sections 1, 3 and 36 of the Legal Practitioners Act, 1879) shall stand repealed;
- 35 (b) the enactments specified in the Schedule shall stand repealed to the extent mentioned therein.

CHAPTER VII

TEMPORARY AND TRANSITIONAL PROVISIONS

Elections to
first State
Bar Council.

47. Notwithstanding anything contained in this Act, the elected members of a State Bar Council, constituted for the first time under this Act, shall be elected by and from amongst advocates, vakils, pleaders and attorneys who, on the date of the election, are entitled as of right to practise in the High Court. 5

Explanation.—Where the territory for which the Bar Council is to be constituted includes a Union territory, the expression “High Court” shall include the Court of the Judicial Commissioner of that Union territory. 10

Term of office
of mem-
bers of first
All-India Bar
Council and
State Bar
Councils.

48. Notwithstanding anything contained in this Act, the term of office of the nominated and elected members of the All-India Bar Council and a State Bar Council constituted for the first time, shall be two years from the date of the first meeting of the Council. 15

Rights of
certain
existing legal
practitioners
not affected.

49. Notwithstanding anything contained in this Act,—

(a) every pleader or vakil practising as such immediately before the date on which Chapter IV comes into force (hereinafter in this section referred to as the said date) by virtue of the provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or any other law who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; 20 18 of 1879. Bombay Act, 17 of 1920.

(b) every attorney practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; 25 18 of 1879.

(c) every mukhtar and revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law; 18 of 1879.

shall, notwithstanding the repeal by this Act of the relevant provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or other law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed or, as the case may be, to which he was subject immediately before the said date and accordingly the relevant provisions of the Acts or law aforesaid shall have effect in relation to such persons as if they had not been repealed. 30 18 of 1879. Bombay Act, 17 of 1920.

50. Notwithstanding anything contained in this Act, for a period of five years from the date on which Chapter III comes into force, a barrister may be admitted as an advocate under this Act on fulfilling the conditions specified in clauses (e) and (f) of sub-section (1) of section 22.

Barristers may be admitted as advocates during limited period.

51. (1) On the constitution of a State Bar Council under this Act (hereinafter referred to as the new Bar Council)—

Disolution of existing Bar Councils.

(a) all properties and assets vesting in the corresponding Bar Council shall vest in the new Bar Council;

(b) all rights, liabilities, and obligations of the corresponding Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the new Bar Council;

(c) all proceedings pending before the corresponding Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the new Bar Council.

(2) In this section, "corresponding Bar Council" in relation to a State Bar Council means the Bar Council for the High Court in the territory for which the State Bar Council is constituted under this Act.

52. Until a Bar Council is constituted under this Act, the power of that Bar Council to make rules under this Act shall be exercised—

Powers to make rules pending the constitution of a Bar Council.

(a) in the case of the All-India Bar Council, by the Supreme Court;

(b) in the case of a State Bar Council, by the High Court.

THE SCHEDULE

[See section 46 (5)]

REPEAL OF CERTAIN ENACTMENTS

Short title	Extent of repeal
1. The Legal Practitioners (Women) Act, 1923 (23 of 1923).	The whole.
2. The Legal Practitioners (Fees) Act, 1926 (21 of 1926).	The whole.
3. The States Reorganisation Act, 1956 (37 of 1956).	Section 53.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to implement the recommendations of the All-India Bar Committee made in 1953, after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in so far as the recommendations relate to the Bar and to legal education.

2. The main features of the Bill are:—

(1) the establishment of an All-India Bar Council and a common roll of advocates, an advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court;

(2) the integration of the bar into a single class of legal practitioners known as advocates;

(3) the prescription of a uniform qualification for the admission of persons to be advocates;

(4) the division of advocates into senior advocates and other advocates based on merit;

(5) the creation of autonomous Bar Councils, one for the whole of India and one for each State.

3. Following the recommendation of the All-India Bar Committee and the Law Commission, the Bill recognises the continued existence of the system known as the dual system now prevailing in the High Courts of Calcutta and Bombay, by making suitable provisions in that behalf. It would, however, be open to the two High Courts, if they so desire, to discontinue this system at any time.

4. The Bill, being a comprehensive measure, repeals the Indian Bar Councils Act, 1926, and all other laws on the subject.

5. The Notes on clauses explain, wherever necessary, the various provisions of the Bill.

A. K. SEN.

NEW DELHI;
The 12th November, 1959.

Notes on clauses

Clause 3.—This clause provides for the constitution of a Bar Council for each State, Union territories being attached to the neighbouring States, on the lines recommended by the All-India Bar Committee. A provision has, however, been made for reservation of certain seats for advocates practising on the original side of the Calcutta and Bombay High Courts who will be in a minority. This provision is based on section 4(3) of the existing Indian Bar Councils Act, 1926.

Clause 4.—This clause provides for the establishment of an All-India Bar Council. The composition of the Bar Council is on the lines recommended by the All-India Bar Committee. The All-India Bar Committee has suggested that each State Bar Council should send one representative to the All-India Bar Council and where there are more than one thousand advocates on the roll of a State Bar Council, it should be entitled to send one additional representative. In view of a large number of persons having joined the legal profession in recent years and several States having become larger units on account of the recent reorganisation of States, the number of one thousand has been changed to three thousand.

Clause 6.—This clause prescribes the functions of a State Bar Council on the lines recommended by the All-India Bar Committee.

Clause 7.—This clause prescribes the functions of the All-India Bar Council. The main functions of the All-India Bar Council will be to prepare and maintain a common roll of advocates and to exercise general supervision and control over State Bar Councils. The Law Commission has deplored the deterioration of standards of legal education and has suggested that the All-India Bar Council should be given certain powers for improving such standards. The All-India Bar Council has accordingly been empowered to recognise the Universities whose degrees in law will be a qualification for enrolment as an advocate. The All-India Bar Council will also lay down general standards of professional conduct and etiquette for advocates.

Clause 9.—This clause empowers the All-India Bar Council and a State Bar Council to constitute certain standing committees. Since the Bar Councils will be fairly large bodies and will not be in a

position to meet often, it will be necessary for them to function in committees.

Clause 15.—This clause provides for the division of the Bar into senior advocates and other advocates as recommended by the Law Commission. The status of a senior advocate will be conferred by the Supreme Court or a High Court on merit only. A senior advocate will be prohibited from accepting certain kinds of minor legal work like the drafting of pleadings, notices, affidavits, etc. A saving provision has been made in respect of the existing senior advocates of the Supreme Court who will continue to be designated as senior advocates.

Clause 16.—This clause requires a State Bar Council to prepare and maintain a roll of advocates for the State. The roll will consist of two parts—the first part containing the names of senior advocates and the second part the names of other advocates. Entries in the roll of advocates will be made in accordance with seniority. The clause lays down certain rules for determining such seniority.

Clause 18.—This clause provides for the preparation and maintenance of a common roll of advocates by the All-India Bar Council. The common roll of advocates will comprise the entries made in all State rolls, and will include the names of advocates of the Supreme Court who are not entered on any State roll. As in the case of the State roll, entries in the common roll will be made in accordance with seniority. The clause lays down certain rules for determining such seniority.

Clause 22.—This clause prescribes the qualifications for admission to the legal profession. In order to be eligible for admission to the legal profession a person must be a citizen of India. Foreigners may be admitted on reciprocal basis. The minimum educational qualifications are a bachelor's degree in Arts, Science or Commerce followed by a degree in law from any Indian University, or any foreign qualification in law which is recognised by the All-India Bar Council. A candidate for admission to the legal profession will also have to undergo a course of practical training and pass an examination in practical subjects. Provision has been made for exemption from the practical test of persons who by reason of their legal training should not be subjected to such a test. Existing vakils, pleaders and attorneys who are law graduates, or who are not law graduates but are entitled to be enrolled as advocates of a High Court can be admitted as advocates if they apply for such enrolment within one year from the commencement of the new law.

Clause 24.—This clause provides that an application for admission as an advocate made to a State Bar Council shall be disposed of by the enrolment committee of that Bar Council. Where an enrolment committee proposes to refuse an application for enrolment, it must consult the All-India Bar Council.

Clause 28.—Every advocate entered in the common roll will be entitled to practise in all courts, including the Supreme Court, and before all authorities and persons throughout the territories to which the new law extends. Thus the common roll will provide a unified Bar for the whole of India.

Clause 29.—This clause empowers the Calcutta and Bombay High Courts to admit attorneys on its roll. Under the Bill, the dual system prevailing on the original side of each of these High Courts will continue until the High Court itself decides to abolish it. Clause 32(2) empowers each of these High Courts to make rules for continuing the dual system.

Clause 31.—This clause provides that no person other than an advocate enrolled under the new law shall be entitled to practise. The rights of existing legal practitioners who are not enrolled as advocates under the Bill are, however, preserved by clause 49.

Clause 33.—This clause provides that all cases of professional or other misconduct shall be disposed of by the disciplinary committee of the State Bar Council concerned.

Clause 35.—This clause provides for an appeal to the All-India Bar Council from any order made by the disciplinary committee of a State Bar Council in any disciplinary proceeding.

Clause 42.—This clause enjoins upon every State Bar Council to remit at the end of every financial year to the All-India Bar Council a part of the enrolment fees realised by it. This will provide the necessary funds to the All-India Bar Council for performing its functions under the Bill.

Clause 43.—This clause provides that subjects of any foreign country, which discriminates against the citizens of India in the matter of legal practice, shall not be entitled to practise in India. It also empowers the All-India Bar Council to lay down conditions subject to which foreign qualifications may be recognised for enrolment as an advocate.

Clause 46.—This clause repeals certain enactments. Such repeal has necessarily to take effect by stages in accordance with the dates on which the corresponding provisions of the Bill come into force.

Clause 47.—This clause makes provision for election to a State Bar Council constituted for the first time. This provision is necessary because, until a Bar Council is constituted, the roll of advocates cannot be prepared and until such roll is prepared, such advocates cannot elect members to a State Bar Council.

Clause 48.—This clause fixes the term of office of members of the All-India Bar Council and a State Bar Council constituted for the first time. The term fixed is a short period of two years which will be the transitional period during which steps will be taken to elect the regular Bar Councils in accordance with the provisions of the Bill.

Clause 49.—This clause saves the rights of certain existing legal practitioners who will continue to be regulated by the existing law.

Clause 50.—Under this clause, a barrister of England may be enrolled as an advocate during a transitional period of five years as recommended by the All India Bar Committee.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 14, 26, 32 and 45 of the Bill confer on certain authorities the power to make rules. Clause 14 empowers the All-India Bar Council and a State Bar Council to make rules for carrying out the provisions of Chapter II. The rules will relate to the procedure to be followed at election of members of the Bar Council, the filling of casual vacancies, summoning and holding of meetings of the Bar Council, etc. Under clause 26 a State Bar Council is empowered to make rules prescribing the course of practical training in law and the examination to be passed after such training, the form in which an application for enrolment as an advocate may be made, the conditions subject to which a person may be admitted as an advocate and the instalments in which the enrolment fee may be paid. Clause 32 empowers a High Court to make rules prescribing the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. In addition, the Calcutta and Bombay High Courts, where the dual system prevails, are empowered to make rules providing for the qualification and admission of attorneys, the functions of such attorneys and the persons who shall be entitled to plead and to act in the High Court in the exercise of its original jurisdiction. Clause 45 confers a general rule making power on the All-India Bar Council. This clause empowers the All-India Bar Council to make rules prescribing the standards of professional conduct and etiquette, the standards of legal education, the foreign qualifications in law which may be recognised, the procedure which may be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee, etc.

2. The matters on which rules can be made are generally matters of procedure or detail. The delegation of legislative power is, therefore, of a normal character.

M. N. KAUL,
Secretary.

